

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Examine the  
Commission's Future Energy Efficiency Policies,  
Administration and Programs.

Rulemaking 01-08-028  
(Filed August 23, 2001)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING NOTICE OF INTENT TO CLAIM COMPENSATION**

**1. Summary**

This ruling responds to the notice of intent (NOI) to claim compensation filed in this docket by the Center for Small Business and the Environment and the Small Business Network of San Francisco (CSBE/SBN), pursuant to Public Utilities Code Section 1804. I find that CSBE/SBN is eligible for an award of intervenor compensation. The exact amount of the award, if any, shall be determined based on the reasonableness of the request for award, and this ruling "in no way ensures compensation."<sup>1</sup>

**2. Statutory Requirements Relevant to CSBE/SBN'S NOI**

Under § 1804(a)(1), "[a] customer who intends to seek an award under this article shall, within 30 days after the prehearing conference is held, file and serve on all parties to the proceeding a notice of intent to claim compensation." The Commission may accept a late filing where a party could not have reasonably identified issues within 30 days of the prehearing conference.

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<sup>1</sup> Public Utilities Code Section 1804(b)(2). All section references in this ruling refer to the Public Utilities Code.

Section 1804(a)(2) sets forth those items that must be addressed in an NOI. Pursuant to Decision (D.) 98-04-059, this ruling must determine whether the intervenor is a customer, as defined in § 1802(b), and identify whether the intervenor is a participant representing consumers, or a representative authorized by a customer, or a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential ratepayers. If the customer category identified is “a representative authorized by a customer,” the NOI should identify “the residential customer or customers that authorized him to represent that customer.” That identification is needed because this category of customer “connotes a more formal arrangement where a customer, or a group of customers, selects a presumably more skilled person to represent the customers’ views in a proceeding.” (D.98-04-059, pp. 28-30.) Participation in Commission proceedings by parties representing the full range of affected interests is important. Such participation assists the Commission in ensuring that the record is fully developed and that each customer group receives adequate representation.

Once the applicable definition of customer is identified, the correct standard of “significant financial hardship” can be applied. Only those customers for whom participation or intervention would impose a significant financial hardship may receive intervenor compensation. Section 1804(a)(2)(B) allows the customer to include a showing of significant financial hardship in the NOI. Alternatively, the required showing may be made in the request for award of compensation. Section 1802(g) defines “significant financial hardship.”

“Significant financial hardship” means either that the customer cannot, without undue hardship, afford to pay the costs of effective participation, including advocate’s fees, expert witness fees, and other reasonable costs of participation, or that, in the case of a group or organization, the economic interest

of the individual members of the group or organization is small in comparison to the costs of effective participation in the proceeding.

The NOI must also include a statement of the nature and extent of the customer's planned participation as far as it is possible to set out when the NOI is filed. (§1804(a)(2)(A)(i).

The Commission's "Intervenor Compensation Program Guide" dated January 2004 identifies the items that must be included in an NOI, and provides a template for its preparation.<sup>2</sup>

### **3. CSBE/SBN's NOI**

CSBE/SBN filed its NOI on October 21, 2004. The last prehearing conference was held in this proceeding on January 23, 2004. CSBE/SBN's NOI is therefore filed long after the statutory deadline. However, § 1804(1)(a) permits the Commission to accept NOIs late in cases where "the schedule would not reasonably allow parties to identify issues" within 30 days after the prehearing conference or "where new issues emerge subsequent to the time set for filing."

The Commission makes exceptions to its rules where they are justified. Indeed, in this proceeding, it accepted the NOI of Greenaction for Health and the Environment (Greenaction), which was filed late because Greenaction did not become aware of this proceeding until shortly before it filed its NOI.<sup>3</sup> In other instances, the Commission has declined to make an exception to its rules

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<sup>2</sup> For NOIs, see pages 3-7 and 14-16 of the Program Guide, which may be accessed via the following link: <http://www.cpuc.ca.gov/PUBLISHED/REPORT/33691.htm>.

<sup>3</sup> See Administrative Law Judge ruling dated October 9, 2003 in this proceeding.

regarding late-filed NOIs, based on the specific circumstances.<sup>4</sup> I believe that the specific circumstances surrounding the late filing of this particular NOI do warrant a relaxation of our rules.

As described in the NOI, CSBE/SBN first sought to participate in this proceeding in March of this year and, only after a series of inquiries and requests by CSBE/SBN to various staff, was granted full party status on September 23, 2004. CSBE/SBN describes its unfamiliarity with the administrative law process, given its relatively new involvement in Commission proceedings. Like Greenaction, CSBE/SBN was not aware of the issues that affect its constituencies from the proceeding's initiation. In light of these circumstances, I find that good cause exists for granting CSBE/SBN's request for the late acceptance of its NOI to claim compensation.

CSBE/SBN has utilized the Commission's template to provide information regarding customer status, significant financial hardship, the nature and extent of its planned participation, and an itemized estimate of its costs of participation. With regard to customer status, I concur with CSBE/SBN that it qualifies as a customer under Category 2 as the authorized representative of a business customer in this proceeding. CSBE/SBN provides written authorization by a San Francisco restaurant to act on its behalf in this proceeding, in order to advocate for policies and programs that meet the needs of small businesses. Although CSBE/SBN states that it also qualifies as a customer under Category 3, the

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<sup>4</sup> See Administrative Law Judge ruling dated January 27, 2004 in this proceeding regarding the late-filed NOI of Latino Issues Forum, and Decision 00-03-004 in Application 98-07-058 regarding the late-filed NOI of The Utility Reform Network. In both instances, the Commission found that the reasons for the delay in filing presented by these parties, who have been involved in many Commission proceedings over the years, were not compelling.

documentation presented is not sufficient to demonstrate that CSBE/SBN is “a representative of a group or organization that is authorized by its bylaws or articles of incorporation to represent the interests of residential customers or small commercial electric customers.” First, we note that CSBE/SBN only submitted the bylaws of SBN. Moreover, nothing in these bylaws indicates that SBN membership has authorized SBN to participate and intervene in governmental proceedings generally (or the Commission proceedings specifically) as customers of electric or gas utilities. Nor does the NOI provide information on the number or nature of SBN’s membership. In any event, I do find that CSBE/SBN qualifies as a Category 2 customer.

CSBE/SBN also provides financial documentation to demonstrate that the customer it is authorized to represent cannot, without undue hardship, afford to pay the costs of effective participation. The July 2004 financial statements of the restaurant, prepared by certified public accountants, indicate total assets of \$40,000 and a net income loss for the last two years. I find that CSBE/SBN has met the “financial hardship” test.

CSBE/SBN states that it will participate in this proceeding in order to ensure that small businesses are better served by future energy efficiency programs. In addition to participating in the various phases of this proceeding, including administrative structure, evaluation measurement and verification and program design, CSBE/SBN states that it will specifically intervene on the issue of on-bill financing. However, CSBE/SBN does not make a reasonable assertion that it will minimize unproductive or unnecessary participation in this proceeding. This is particularly relevant to a proceeding where there are many other parties actively involved that represent a wide range of interests, including those of business customers. Future compensation, if any, may be influenced by

the extent to which CSBE/SBN avoids unproductive or unnecessary participation.

CSBE/SBN states that it expects a total estimated budget of \$92,675 itemized as follows:

Hank Ryan

\$ 43,750	250 hrs @ \$175.00 hr
\$ 1,750	20 hrs travel time @ \$87.50/hr
\$ 1,500	Phone/Fax
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<b>\$ 47,000</b>	

Stephen Hall

\$ 43,750	250 hrs @ \$175.00/hr
\$ 875	10 hrs travel time @ \$87.50/hr
\$ 450	Printer Cartridges
\$ 100	Paper
\$ 500	Telephone
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<b>\$ 45,675</b>	

**Total Estimated Cost of Participation: \$92,675**

CSBE/SBN satisfies the requirement that it include an itemized estimate of the compensation that it expects to request. However, CSBE/SBN provides no specific information on the professional qualifications (e.g., whether they are technical experts or attorneys) of the persons providing the personal services. CSBE/SBN is encouraged to examine the range of rates generally found reasonable by the Commission for technical professionals and attorneys compensated under the intervenor compensation program. The reasonableness of each hourly rate should be addressed by CSBE/SBN in any subsequent request for compensation it ultimately files.

Moreover, CSBE/SBN may have an “unrealistic expectation of compensation” (§1804(b)(2)). This is based on the budgets I have seen for

participants in this and similar energy efficiency proceedings in the past, and the limited focus of the issues that CSBE/SBN has commented on in the major phases of this proceeding to date. The amount of the future award, if any, will be decided by the Commission based on the nature of the contribution made by CSBE/SBN to the Commission's final decision. It will also be dependent upon the hours spent, reasonableness of those hours, reasonableness of hourly rates and other factors provided in the Public Utilities Code and Commission decision.

**IT IS RULED** that:

1. The Center for Small Business and the Environment and the Small Business Network of San Francisco (CSBE/SBN) is a customer for purposes of intervenor compensation (Category 2).
2. CSBE/SBN has presented a satisfactory statement of the nature and extent of its planned participation.
3. CSBE/SBN has presented a satisfactory itemization of an estimate of the compensation it expects to request, although CSBE/SBN may have an unrealistic expectation of compensation for the reasons discussed in this ruling.
4. CSBE/SBN has established that its participation without an award of intervenor compensation would pose a significant financial hardship.
5. The reasonableness of the hourly rates for personnel services stated in the Notice Of Intent shall be addressed in the later request for compensation, if any, by CSBE/SBN.

6. CSBE/SBN is eligible for an award of intervenor compensation. The exact amount of the award, if any, shall be determined based on the reasonableness of the request for award, and this ruling “in no way ensures compensation.”

(§1804(b)(2).) The Commission may audit the records and books of CSBE/SBN to the extent necessary to verify the basis of the award. (§1804(d).)

Dated November 12, 2004, at San Francisco, California.

/s/ MEG GOTTSTEIN by LTC

Meg Gottstein

Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Notice of Intent to Claim Compensation on all parties of record in this proceeding or their attorneys of record.

Dated November 12, 2004, at San Francisco, California.

/s/ ERLINDA PULMANO

Erlinda A. Pulmano

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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